

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of McRae Park Food & Deli,
WIC Vendor #W7312

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Phyllis A. Reha, at 9:30 a.m. on August 4 and 23, 1995, at the Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota. The record closed on October 18, 1995, with the receipt of the final brief of the parties. A request to reopen the record to take additional testimony was denied.

Wendy Legge, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103, appeared on behalf of the Minnesota Department of Health. Carl J. Newquist, Suite 301, Fridley Plaza Office Building, 6401 University Avenue N.E., Fridley, Minnesota 55432-4381, appeared on behalf of the Appellant, McRae Park Food & Deli.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Commissioner of Health shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with Anne Barry, Commissioner of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440.

STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether the Appellant violated Minn. Rule 4617.0065, subp. 2A(3) and, if so, whether he should be denied reauthorization as a vendor in the special supplemental food program for women, infants and children (WIC).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. McRae Park Food & Deli is a small grocery store located at 4653 Chicago Avenue in Minneapolis, Minnesota. The store is owned and operated by Salem Abuhamed. His son, Adnan Abuhamed, assists in the running of the store.

2. McRae Park Food & Deli became an authorized WIC vendor on June 9, 1994. As part of the authorization process, a contract is executed between the Department and the vendor which allows the grocery store to sell food items to WIC participants in exchange for WIC vouchers. The vouchers are limited to certain food items and cannot be exchanged for cash or other items. After a vendor accepts a WIC voucher from a WIC participant, the vendor must stamp the voucher with the stamp issued by the Department in the authorization process. The vendor then must deposit the voucher in the vendor's bank. The voucher is then cleared through a single bank (the First State Bank of Lake Lillian) and returned to the Department.

3. The contract (referred to as the "guarantee") signed by Salem Abuhamed on June 9, 1994, as owner of McRae Park Food & Deli, lists the requirements of participation in the WIC program. The vendor is identified in the guarantee in the first line of the document as "McRae Park Food & Deli." Exhibit 6. The address of McRae Park Food & Deli is listed on that same line. Regarding the vendor stamp, the guarantee states:

Possess only one vendor stamp, use the vendor stamp to validate only WIC vouchers accepted at the Vendor's location, not use a vendor stamp issued to another vendor, and not duplicate a vendor stamp.

Exhibit 6, at 4.

4. Until January 26, 1994, WIC contracts with vendors were always written for a two-year period. At the end of the two-year period, the vendor could apply for a renewal of the guarantee for the next two years. The Department had established a process for renewals that ensured that a timely application would result in an inspection and reauthorization without an interruption in the vendor's authority to accept WIC vouchers. A vendor's authorization was scheduled to expire and require renewal two years after the initial grant of the authorization, or on the biannual anniversary of the initial grant of authority. This was true no matter where in the state the vendor was located. This policy required Department personnel to travel around the state, to each of the eight regions administered by the Department, throughout each year.

5. The Department changed its renewal policy on January 26, 1994. Exhibit 22. The new policy established anniversary dates for renewal of authorizations on a regional basis, regardless of the initial date of the grant of authority. Since the State has eight regions, every vendor would have an anniversary date within a two-year period of the initial grant of authority. For the first renewal, the vendor would have to reapply regardless of when the initial authorization occurred. Each subsequent renewal would occur two years later, on the anniversary date for that region. Under the new policy, the uniform anniversary date for region 2 (consisting entirely of Hennepin

County) is September 30 of odd numbered years. Exhibit 23. Reauthorizations would begin for that region on July 1 of the renewal year and end on September 30. McRae Park Food & Deli was first authorized on June 9, 1994, and that authorization expired on September 30, 1995.

6. Upon receipt of an application for authorization or reauthorization, an inspection is conducted by a member of the Health Department WIC staff to ensure that all vendor requirements are being met and the vendor understands the requirements of the program. The inspection must occur by the end of the quarter following the quarter in which the application is received by the Department.

7. Kathleen Bennett was working as a WIC Vendor Liaison for the Department until early February, 1995. Bennett reviewed applications, visited stores, and assessed whether authorizations should be granted. On May 4, 1994, Bennett visited McRae Food & Deli. The store did not meet the minimum food stock requirements for infant formula. Salem Abuhamed was given a notification of failure to meet WIC requirements. He telephoned Bennett to complain about the denial of his application. Salem Abuhamed was upset and told Bennett that the store would obtain the needed inventory. Under the new renewal policy of the Department, McRae's application would have been denied which would have required McRae Park Food & Deli to reapply. Upon reapplication, reconsideration would have occurred in the following quarter. However, Bennett advocated to the Director of the WIC program that the Department reconsider the application by making a second visit. This would eliminate the need for a second application which would cause a one quarter delay in authorizing the vendor to accept WIC vouchers. The Director agreed and authorized the second visit.

8. On June 7, 1994, Bennett made a second inspection of McRae Park Food & Deli. The vendor passed that inspection and McRae Park Food & Deli was authorized to accept WIC vouchers. Bennett read the entire contents of the guarantee issued to McRae Park Food & Deli to Salem Abuhamed on June 9, 1994. On June 9, 1994, Bennett issued stamp number W 7312 to McRae Park Food & Deli.

9. On January 3, 1995, Bennett received a phone call from Salem Abuhamed who asked her what was required for WIC authorization of another grocery store that he was in the process of purchasing. Abuhamed identified the store as Tom & Jerry's. Bennett explained that an application was required, and if the application was received by March 31, the store would be visited in April, May, or June and authorization could be issued soon thereafter. Abuhamed became upset and told Bennett that the delay would cost the newly purchased store business. Abuhamed asked why he could not simply use the stamp that he had been issued for McRae Park Food & Deli. Bennett explained the requirements for an existing qualified store to retain its eligibility, and further explained why Tom & Jerry's did not qualify for the transfer. Abuhamed insisted that he had a right to either receive a new stamp immediately or use his existing stamp for both stores. Bennett explained that only vouchers accepted at an authorized location can be stamped with a stamp from that location.

10. Based on the January 3 telephone conversation, Bennett wrote a note to Mary Rogness, Investigator for the Department, that summarized the potential for improper use of the McRae Park Food & Deli WIC stamp and urged Rogness to keep a "very close eye on what goes on there." Respondent Exhibit A.

11. An application for WIC vendor authorization was filed by Tom and Jerry's in January, 1995. The application was returned for failure to include a grocer license. The application was re-filed in March, 1995.

12. Rogness monitored the number of vouchers redeemed and the amount of money those vouchers represented at both McRae Park Food & Deli and Tom & Jerry's. Through January, 1995, Rogness noted the changing totals in both voucher redemption (by dollars reimbursed) and numbers of vouchers redeemed. In terms of dollars, the changes were as follows:

	<u>McRae Park Food & Deli</u>	<u>Tom & Jerry's</u>
July, 1994		2285.03
	336.97	
August, 1994		2661.73
	646.64	
September, 1994		2424.93
	384.75	
October, 1994		2229.01
	693.58	
November, 1994		2644.76
	888.49	
December, 1994		2126.48
	1556.48	
January, 1995		555.82
	2900.73	

Exhibit 13 and Respondent's Exhibit B.

12. On February 27, 1995, Rogness presented an investigatory plan to Rick Chiat, the Director of the Vendor Unit of the WIC program for the Department, , to inquire into the possibility that Tom & Jerry's was improperly accepting WIC vouchers and transferring the vouchers to McRae Park Food & Deli for redemption. The reasons stated in the plan for the investigation are:

- (1) The store owner intimated to a WIC staff person that he intended to accept vouchers at this store before he was authorized as a WIC vendor
- (2) The store has a sign in the store window which indicates that they accept WIC vouchers

- (3) The voucher redemptions for the store owner's other (WIC authorized) store has increased significantly since Tom & Jerry's was purchased.

Exhibit 15.

13. Chiat considered the investigative plan, including the reasons for investigating, and approved an undercover investigation with "voucher buys." The number of proposed "buys" in the investigative plan was set at two. Exhibit 15.

14. Daniel Kingman, a personal friend of Mary Rogness, drove Rogness to Tom and Jerry's on March 23, 1995. Kingman was shown WIC voucher number 35162792. Exhibit 1. Rogness turned out her pockets and showed Kingman that she had nothing with which to purchase milk but WIC voucher no. 35162792 and the signature book with exemplars of the signature of Elizabeth Logan. "Elizabeth Logan" is a name used by Rogness in undercover investigations. Rogness was wearing a disguise that consisted of foam padding giving her the appearance of being pregnant.

15. Adnan Abuhamed was working at Tom & Jerry's on March 23, along with another person. Rogness entered the store, picked up two one-gallon containers and one half-gallon container of milk and brought them to the counter. Rogness put the milk containers on the counter and placed WIC voucher no. 35162792 on the counter and signed it with the name Elizabeth Logan. The person working at the counter accepted the WIC voucher, but did not ring up the sale on the cash register. Rogness returned to the car carrying two and one-half gallons of milk.

16. As part of her investigative duties on March 23, 1995, Rogness and Kingman visited four grocery stores. All of the stores were owned by persons of Middle Eastern origin. After the store visits, Kingman drove Rogness back to her apartment, and Rogness began dictating her report. At Rogness' apartment, Kingman filled out the "Investigative Assistant's Statement" portion of the Report of WIC Investigation. Exhibit 3.

17. On April 5, 1995, the First State Bank of Lake Lillian accepted WIC voucher no. 35162792 for payment in the amount of \$7.58, the payment amount being transferred to Norwest Bank to be credited to the account of McRae Park Food & Deli. Exhibit 5. The WIC voucher bore the vendor stamp no. W 7312, which is the number of the stamp issued to McRae Park Food & Deli.

18. Rogness issued a letter indicating that McRae Park Food & Deli was disqualified from participation in the WIC program for one year effective July 4, 1995. The letter advised Salem Abuhamed that he needed to return the WIC stamp issued to McRae Park Food & Deli. The notice stated that there was a 30-day period to appeal the findings of the investigator and request a hearing. The notice also indicated that the disqualification would also affect any other vendor authorization held by any store owned by Salem Abuhamed.

19. Salem Abuhamed appealed the disqualification of McRae Park Food and Deli by letter on June 23, 1995. Exhibit 9. Rogness then wrote a letter to Abuhamed that the counsel for the Department would be contacting him about his appeal. Rogness also advised Salem Abuhamed that the effective date of the disqualification was being changed to July 5, rather than July 4, 1995 because the Department would not be open on the July 4 holiday and the WIC stamp could not be returned until July 5, 1995. Exhibit 10.

20. On June 30, 1995, Rogness and Mark Peine, another Department investigator, visited Tom & Jerry's to perform the store inspection required before a license is issued. That date was the last day upon which the site inspection could have been performed under the Department's inspection policy. While at the store, Rogness talked to Salem Abuhamed and he began discussing the disciplinary action against McRae Park Food & Deli. Salem Abuhamed indicated that he did not see any harm in accepting WIC vouchers at Tom & Jerry's, so long as the proper food items were being obtained with the vouchers. Salem Abuhamed indicated that he was simply putting the vouchers in his shirt pocket and taking them to McRae Park Food & Deli to be stamped. At the time of the inspection, Tom & Jerry's had two painted signs on the outside of the building indicating that the store accepted WIC vouchers. One sign was painted on the exterior of the building (and had been there from the previous owner) and the other was painted on plywood covering a large window facing 33rd Street. The plywood containing the sign covered the location at which Rogness had seen a "WIC Accepted Here" sign at the time of her undercover buy in March. Peine noted a sign above the cash register in Tom & Jerry's which read:

We Accept WIC

Thank you for shopping at Tom & Jerry's

Exhibit 24.

21. On July 10, 1995, the Department issued a vendor guarantee for Tom & Jerry's. The vendor guarantee expired on September 30, 1995. Respondent's Exhibit C.

22. On July 5, 1995, Salem Abuhamed returned to the Department the WIC vendor stamp issued to McRae Park Food & Deli..

23. The Department maintains a "hot list" of licensed vendors considered at risk of violating the rules concerning redemption of WIC vouchers pursuant to Minn. Rule 4617.0080. The factors used to determine which vendors are placed on the list are the level of WIC voucher activity, and complaints received from WIC participants. The race or national origin of the vendor is not a factor used by the Department when it generates the list. The list is compiled by a computer program. Investigators do not select who is placed on the list. The vendors on the list are identified by store names, not by the names of the store owners.

24. A Notice of and Order for Hearing in this matter was issued by the Commissioner of Health on July 7, 1995. The Notice set this matter on for hearing on August 4, 1995, before Administrative Law Judge Bruce Campbell. The matter was reassigned to Administrative Law Judge Phyllis A. Reha, due to the unavailability of Judge Campbell.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of the Minnesota Department of Health have jurisdiction in this matter pursuant to Minn. Rule 4617.0100, subp. 1. The Notice of Hearing was proper in all respects and the Department has complied with all other substantive and procedural requirements of law or rule.

2. Minn. Rule 4617.0100, subp. 3, provides the appropriate burden of proof standard for WIC vendor sanction cases such as this. That rule states:

Subp. 3. Burden of proof. A local agency or vendor that appeals the commissioner's denial of an application to participate has the burden of proving the facts at issue by a preponderance of the evidence. When a local agency or vendor appeals a disqualification or other sanction, the commissioner has the burden of proof.

The Department has the burden of proof to show that disqualification is appropriate. McRea Park Food & Deli has the burden of proof to demonstrate any affirmative defense in this case.

3. Minn. Rule 4617.0075 initially states that "a person whose application to be a vendor has been approved shall sign a retail food vendor guarantee, ... A separate vendor guarantee must be signed for each vendor."

4. Minn. Rule 4617.0075(E)(2) requires that each vendor guarantee contain assurances that a vendor "will use the vendor stamp to validate only those vouchers accepted at the vendor outlet for which the stamp was issued."

5. McRae Park Food & Deli accepted a WIC voucher that had been redeemed at Tom & Jerry's, stamped that voucher with its WIC stamp, and deposited the voucher for redemption.

6. McRae Park Food & Deli violated the vendor guarantee requirement that a vendor accept WIC vouchers only at the location for which the stamp is issued, as required by Minn. Rule 4617.0075(E)(2); and that violation has been demonstrated by the Department.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner of Health take appropriate disciplinary action with respect to the Appellant's license.

Dated this 9th day of November, 1995.

PHYLLIS A. REHA
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped, No Transcript Prepared.

MEMORANDUM

In this matter, McRae Park Food & Deli has advanced five arguments. First, that the Department investigator was motivated by racial animus to falsify the reporting of the undercover operation. Second, that the Department lacked probable cause to investigate McRae Park Food & Deli, and the reason for the investigation was racial bias. Third, that the Department is engaged in discriminatory enforcement. Fourth, that Tom & Jerry's was entrapped into accepting the WIC voucher. Fifth, that the rules do not restrict the acceptance of WIC vouchers by a licensed vendor from a location not specified in the vendor guarantee.

Several facts are cited to support McRae Park Food & Deli's claim of racial animus. The Department maintains a "hot list" of vendors and many of the vendors on the list are of Middle Eastern descent or origin. All of the vendors visited by the Department investigator on March 23, 1995, were of Middle Eastern origin. A note from the Department's vendor liaison suggests that the investigator "keep a very close eye on what goes on there." Respondent Exhibit A. The site inspection of Tom & Jerry's was conducted on the last day of the quarter following the receipt of the application, the last day that the inspection could be performed. The guarantee issued to Tom & Jerry's expired on September 30, 1995, three months after it was issued.

McRae Park Food & Deli has maintained that for a claim of discriminatory enforcement, all it needs to show is that the licensee is the member of a racial minority

and that adverse action is taken against the licensee. Respondent Letter Brief, October 12, 1995, at 1. At that point, Appellant maintains, the burden shifts to the Department to articulate a legitimate reason for the enforcement action. Id. If such a reason is advanced, the Appellant can prevail if it demonstrates that the reason is pretextual. Id.

The legal analysis offered by McRae Park Food & Deli is the test for *employment* discrimination set out in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-03 (1973), for use in cases arising under Title VII of the Federal Civil Rights Act of 1964, 42 U.S.C. § 200e. et. seq. This test also applies in actions brought under the Minnesota Human Rights Act (Minn. Stat. Chap. 363). The case at bar is an action against the license of a WIC vendor. To interpose a defense of discriminatory enforcement the licensee must show that the enforcement agency “intentionally, deliberately, or systematically discriminated in the enforcement of an ordinance [rule].” State v. Vadnais, 202 N.W.2d 657, 660 (Minn. 1972).

The Minnesota Supreme Court expanded on what must be shown to establish a claim of discriminatory enforcement in State v. Russell, 343 N.W.2d 36 (Minn. 1984). The Supreme Court quoted the Second Circuit Court of Appeals, which stated:

To support a defense of selective discriminatory prosecution, a defendant bears the heavy burden of establishing, at least *prima facie*, (1) that, while others similarly situated have not generally been proceeded against because of conduct of the type forming the basis of the charge against him, he has been singled out for prosecution, and (2) that the government’s discriminatory selection of him for prosecution has been invidious or in bad faith, *i.e.*, based on such impermissible considerations as race, religion, or the desire to prevent his exercise of constitutional right.

Russell, 343 N.W.2d at 37, (quoting United States v. Berrios, 501 F.2d 1207, 1211 (2nd Cir. 1974).

Proving actions which constitute intentional, deliberate, or systematic discrimination in enforcement was discussed in State v. Hyland, 431 N.W.2d 868 (Minn.App. 1988). In that case, the Court of Appeals stated that “the defendant must allege facts which show that he was singled out for enforcement and that his selection was invidious or in bad faith.” Hyland, at 873.

In this case, there is no evidence showing that McRae Park Food & Deli was “singled out” from other vendors who were engaging in similar conduct. The only evidence presented of other investigations was the *in camera* inspection of the four investigatory files of the vendors visited by the Department investigator on March 23, 1995. In each file, specific, nondiscriminatory reasons were stated that justified the undercover operation. There has been no evidence that vendors from other racial groups are not subject to adverse licensing actions by the Department for similar conduct.

The “hot list” cited as evidence of racial discrimination is required to be kept by 7 C.F.R. § 246.12(l)(1) as a condition of participation in the WIC program. The vendors named in that list are derived from factors in the regulation. At no time is race considered, either affirmatively or negatively, in compiling the list. The “hot list” does not constitute evidence of discrimination in enforcement by the Department.

The site inspection and length of guarantee for Tom & Jerry’s are alleged to have been evidence of discrimination. The Department’s rules allow some discretion as to when a site inspection must occur and for what time period the guarantee must be issued. The Appellant has drawn an inference that the vendor was being discriminated against based on race by “delaying” the site inspection to the last permissible day and then issuing a guarantee for only three months. The actual date of inspection is within the discretion of the Department. The Department is in compliance with its own rule so long as the inspection is within the quarter following the completion of the vendor application. The Department has complied with its own rule. The date of the site inspection is not evidence of discrimination. The length of the guarantee issued was consistent with Department policy changed in January, 1994 to coordinate the renewal dates of guarantees within regions of the State. There is no evidence that the Department’s policy was adopted to permit discrimination. There is no evidence that the Department has failed to apply this policy in a nondiscriminatory fashion.

In this matter, the Department was aware of the comments from Salem Abuhamed that, in his opinion, he was entitled to either be issued a stamp immediately for Tom & Jerry’s, or use the stamp from McRae Park Food & Deli to redeem vouchers accepted at Tom & Jerry’s. This constitutes an announcement that McRae Park Food & Deli is considering violating the rules regarding WIC redemption. After examining the pattern of WIC redemptions from McRae Park Food & Deli and Tom & Jerry’s, a reasonable person could legitimately suspect that WIC vouchers were being transferred from Tom & Jerry’s to McRae Park Food & Deli for redemption. Prominent display of signs announcing “WIC Accepted Here” to the public at Tom & Jerry’s suggest that persons are being encouraged to use the vouchers there. These are all reasons which belie any intentional, deliberate, or systematic discrimination in the enforcement of the rules governing the WIC program.

To Mr. Chiat, the most compelling reason to authorize the investigation of Tom & Jerry’s, was the existence of a sign on the store stating, “WIC Accepted Here” when the store was *not* in possession of a valid WIC stamp. Respondent questioned the validity of that reason, since the sign was there before Abuhamed purchased the store from the previous owner. Respondent analogized the sign to an address on a residence unlikely to be removed by a subsequent owner. The analogy is inappropriate. An address does not change with the sale of a property. In this case, there was a change; to wit, Tom & Jerry’s was no longer authorized to accept WIC vouchers after the sale of the store. Retaining a sign when a store is not authorized to accept WIC vouchers creates confusion and potential conflict between the store owners, its employees, and store customers, who might attempt to present WIC vouchers and are refused. No such conflict arises if the vouchers are accepted. Retaining the “WIC Accepted Here” sign

provides the Department with probable cause to investigate whether the store is still accepting WIC vouchers, despite its lack of authorization to redeem those vouchers.

McRae Park Food & Deli's argument that the Department lacked probable cause fails on two grounds. First, the facts recited in the preceding paragraph establish that the Department had probable cause to investigate this matter. Second, an agency administering a "pervasively regulated" program does not need probable cause to initiate an investigation. United States v. Biswell, 406 U.S. 211 (1972). This principle has been accepted in Minnesota. State v. Wybierala, 235 N.W.2d 197 (Minn. 1975). The investigation carried out here was an offer of a WIC voucher, not a search, which is where the probable cause requirement arises. Even if a search was involved, 7 C.F.R. § 246.12(f)(2)(x), provides that a "food vendor may be monitored for compliance with Program rules." There is no basis for rejecting this action on the argument that the Department lacked probable cause.

In a sense, the agency power to investigate may be viewed as inquisitorial in that it may be based on a mere suspicion that the law is being violated or may be simply to satisfy the agency that no violation exists. United States v. Morton Salt Co., 338 U.S. 632, 652 (1950). Agency investigations of specific activity by an individual or business need not be undertaken only for the purpose of proving pending charges but may be undertaken to ascertain whether any such charges may be brought. Kohn v. State, 336 N.W. 2d 292, 296 (Minn. 1983). As long as the agency has the statutory authority to undertake the investigation, and there is reasonable grounds to believe that there may be a violation of law, the agency may investigate. See, Beck, Bakken, Muck, *Minnesota Administrative Procedure*, Ch. 3 (Butterworths, 1987). Here, the Department has met all of those criteria.

Appellant has advanced several inconsistent arguments regarding the facts in this case. In attempting to explain the presence of the McRae Park Food & Deli stamp on the investigator's voucher, Appellant maintains that the investigator actually redeemed the voucher at McRae Park Food & Deli and falsified her report. This argument has not been supported by facts in the record. The Judge has found the investigator and the person who accompanied her to be credible. The voucher was redeemed at Tom & Jerry's and the Findings in this Recommendation reflect that fact.

Appellant has argued that the person who received the voucher was entrapped by the investigator wearing a disguise. This argument need only be made if the voucher was received at Tom & Jerry's, since McRae Park Food & Deli was authorized to accept the voucher, as presented. In criminal matters, the entrapment defense requires:

first, that the defendant show that the government induced the crime, after which the government must fail to show beyond a reasonable doubt that the defendant was predisposed to commit the crime. [citation omitted] Accordingly, an entrapment defense exists where the government has lured the accused into committing an offense which he otherwise would not have committed and had no intention of committing. State v. Poague, 245 Minn. 438, 443,

72 N.W.2d 620, 625 (1955). On the other hand, no matter how involved the government is in inducing the commission of a crime, the defense of entrapment [fails] if the government can prove beyond a reasonable doubt that the defendant was predisposed to commit the crime.

State v. Johnson, 511 N.W.2d 753, 754-55 (Minn.App. 1994)(quoting State v. Ford, 276 N.W.2d 178, 182 (Minn. 1979).

Even though this is a civil case and not one that is criminal, the Judge will address the Respondent's entrapment argument. In this matter, the Department induced the violation cited by offering a WIC voucher as payment for milk at Tom & Jerry's. However, McRae Park Food & Deli has completely failed to show that there was no predisposition to commit the offense. Tom & Jerry's displayed a sign that WIC was accepted there. The counter-person accepted the voucher without pleading or other inducement, indeed almost without any conversation. The voucher was transported to the authorized location, and the McRae Park Food & Deli stamp was used to authorize payment. The voucher was deposited for credit to the McRae Park Food & Deli account. Even applying the evidentiary standard of beyond a reasonable doubt, the Department has demonstrated that McRae Park Food & Deli was predisposed to accept WIC vouchers received at another location. McRae Park Food & Deli was not entrapped in this matter.

Appellant has asserted that the violation complained of here, the receipt of a WIC voucher at an unauthorized site and the use of an authorized vendor's stamp to obtain payment on the voucher, is not prohibited by the rules of the Department. The rules are not exemplars of clarity on this issue. However, both the guarantee signed by Salem Abuhamed and the explanations given him by Department staff adequately informed him of the long-standing agency practice of allowing only one stamp per location and prohibiting the transfer of vouchers between locations. The rule is reasonable to ensure that inspections can be performed and fraud in the system can be detected.

McRae Park Food & Deli has argued that the rule penalty for the violation here is unreasonable when compared to the penalties for different violations. This is a facial attack on a rule and such an attack must be made pursuant to Minn. Stat. § 14.44. There is no basis for concluding that the rule is unreasonable as applied in this matter.

The Judge is convinced that Salem Abuhamed was not engaged in exchanging vouchers for improper merchandise or cash. Mr. Abuhamed sincerely believed that he was authorized to accept the vouchers at Tom & Jerry's and use his McRae Park Food & Deli stamp to obtain reimbursement. Nevertheless, allowing licensed vendors to accept vouchers from unlicensed locations would render enforcement of the WIC regulations practically impossible. Such a practice would violate the federal regulations governing the WIC program and could result in adverse actions against the State, up to and including Minnesota being disqualified from participation in the program. There is no basis on which to overlook the violation that occurred here. Adverse action is appropriate against the vendor license of McRae Park Food & Deli.

P.A.R.